

# Precedence Terms of Use

## 1. To whom do these terms apply?

Precedence Health Care Pty Ltd ACN 115 940 120 (**Precedence**) offers to make its Services available to you in accordance with these Terms of Use (**Terms**).

These Terms replace any previous terms applicable to Services provided by Precedence.

Once you are registered for a Precedence Account, you are referred to as a "member". If you are a care provider, the people in your care are referred to as "patients".

## 2. Precedence Accounts.

You will need a Precedence Account to access many of our Services. Your Precedence Account lets you sign in to products, websites and services provided by us and some of our partners.

You can create a Precedence Account at no cost by signing up online.

On establishing a Precedence Account, you are required to accept these Terms, which constitute a legal agreement between you and us. You must ensure that your registration details are accurate at all times, either by updating your details via our websites or by otherwise notifying us of any change to the registration details as originally supplied.

You agree not to use any false, inaccurate or misleading information when establishing your Precedence Account. In some cases, a third party may have assigned a Precedence Account to you. In all cases, you and only you have control of your Account. If you create a Precedence Account on behalf of an entity, such as your business or employer, you represent that you have the legal authority to bind that entity to these Terms. If you create a Precedence Account in your capacity as the parent of a minor or the guardian of any individual, you represent that you have the authority to do so and we reserve the right to seek verification from you in any instance. You cannot transfer your Precedence Account to another user or entity. To protect your Account, keep your Account details and password confidential. You are responsible for all activity that occurs under your Precedence Account.

If you do not agree to all of these Terms (as amended from time to time), you are not permitted to use this site or any of the Services.

### **3. Who is responsible for the provision of the Services?**

The Services are provided by Precedence. References to "we", "us" and "our" are references to Precedence as a corporate entity.

### **4. Payment for Services**

Some of the Services accessed through your Precedence Account attract a service fee and may require you to enter into a separate Service Agreement. You will always be advised if any Service fee is associated with a Service and will be required to explicitly agree to payment of the fee prior to the provision of the Service. You are still required to comply with these Terms after you enter into a separate Service Agreement.

You can view the terms and conditions of these Service Agreements, and the services to which these Agreements apply, by going to the web page at [cdm.net.au/serviceagreementterms](http://cdm.net.au/serviceagreementterms) or by clicking on the "**Privacy**" link at the bottom of any page on our website.

### **5. Can we update these terms?**

Yes. We may change these Terms at any time and we will tell you when we do. Using the Services after the changes become effective means you agree to the new terms. If you do not agree to the new terms, you must stop using the Services.

You will always be able to view the most current version of the Terms by clicking on the link "**Privacy**" link at the bottom of our website.

### **6. Informed consent**

Many of our Services enable patients or others involved in patient care to store or share their personal health information. It is a pre-condition that patients provide consent to (a) their personal information being provided to us by themselves, their care providers and other suitably authorised persons or organisations; (b) the storage of this information on secure dedicated servers located in Australia; (c) the use of this information in connection with the provision of a variety of health and wellness services; and (d) the sharing or accessing of this information as part of the Services, subject in each case to the handling of that information in accordance with our privacy policy.

In all circumstances, we will only store and share a patient's personal information with the informed consent of the patient. We may obtain such informed consent directly from the patient or, where necessary and permissible, from a care provider or some other third party.

If you are a care provider and using our Services to store or share personal information for your patients, it is your responsibility to obtain informed consent from the patient or to otherwise ensure that it is legally permissible for the patient's health data to be used in this way.

The first time you, as a care provider, provide us with any information about a patient, you will be asked to confirm that you have obtained informed consent from the patient or that it is otherwise legally permissible for the data to be disclosed to us, and we will rely upon this confirmation in our handling of the patient's data.

Some of our Services enable you to provide access to a patient's personal information to other care providers or third parties. If you do so, it is your responsibility to ensure that the patient is informed that their personal information will be accessible to these other providers or third parties.

By agreeing to these Terms, you accept your obligation to obtain informed consent as described herein or to otherwise ensure you have the authority to share a person's personal information. To assist you in obtaining informed consent, we provide an explanatory Information Sheet "Informed Consent: How cdmNet Collects and Shares Health Information" on our website.

## **7. Using Third-Party Apps and Services**

The Services may allow you to access or acquire products, services, websites, links, content, material, games or applications from third parties (companies or people who are not Precedence) ("Third-Party Apps and Services"). Many of our Services also help you find Third-Party Apps and Services and you acknowledge that you are directing us to provide Third-Party Apps and Services to you. These Third-Party Apps and Services may also allow you to store patient and other data with the publisher, provider or operator of the Third-Party Apps and Services. The Third-Party Apps and Services may present you with a privacy policy or require you to accept additional terms of use before you can install or use the Third-Party App or Service. Any additional policies or terms do not modify these Terms, save that the more restrictive terms will always apply. We do not license any intellectual property to you as part of any Third-Party Apps and Services. You agree to assume all risk and liability arising from your use of these Third-Party Apps and Services and you also agree that we are not responsible for any issues arising out of your use of them. We are not responsible for information provided by third parties.

## **8. Access to information**

If you are a care provider and consent to use a Connector Service (such as cdmNet or MediTracker), you authorise installation of the connector software and regular uploads of patient personal data from your clinical system for any patient in your care who consents to the storage or sharing of this data via the Service. Such data may include the patient problem history (including family and social history), immunisations, adverse reactions and allergies, medications, measurements and pathology results but will not include anything that you mark as confidential in your clinical software and will not include any personal notes made by you.

If and to the extent consented to by the patient (and any other implicated third party), personal information may be shared with their care team and other authorised healthcare professionals and organisations.

Some of this information may be converted to de-identified form (that is, to a form in which identifiers have been permanently removed and from which no specific patient can be identified or re-identified). We may use this de-identified information for the purposes of research, trials and analyses relating to improvements in health and the management of health services.

We do not claim ownership of any patient personal data or de-identified data uploaded by you and stored or shared by the Services.

## **9. Information stored and used by the Services**

Some of the Services use built in rules and alerts to generate personalised care plans, to track adherence to these care plans, to provide advice and information, and to provide reminders and alerts to assist care providers and patients to better manage their care. The rules and alerts that are used in this way are based on best practice guidelines and were developed in consultation with the Department of General Practice, Monash University, and other informed organisations and individuals. The rules and alerts are considered sufficiently reliable to enable users to exercise their own professional judgement, having regard to, among other things, a particular patient's condition.

The information provided via the Services is on an 'as is' basis and any alert (or lack thereof) does not constitute a recommendation or advice by us to take or refrain from taking any course of action.

Some of the Services use a health services directory to assist in assigning tasks to specified providers. We do not take any responsibility for the accuracy of this directory, including contact details.

We use all reasonable endeavours to provide high quality and current information on this site and through the Services but we do not provide any warranty or guarantee that the information provided on this site is correct, complete, or up-to-date.

Some of the information on this site is sourced from our Services, some from third parties, and some will have been inserted by you.

Whether the information comes from us, from someone else or from you, and subject to any rights you may have under the *Australian Consumer Law*, we do not accept liability for any loss or damage that you may directly or indirectly suffer (including loss or damage attributable to negligence), as a result of your use of the information or our Services.

To the extent that we give advice to a patient, this advice must be regarded as generic, and not necessarily relevant to the patient's particular situation. If you are a patient, you must ***always seek personal medical advice*** which pays attention to your individual condition. Any medical concerns, including decisions about medication or any other health treatment, should always be made in consultation with your health care provider. If you have any serious medical concerns, do not rely on this site and please consult your doctor immediately. In the case of a medical emergency, telephone 000 immediately for emergency assistance.

***It is important to understand that the Services are not a substitute for professional medical advice and do not replace the need for individual advice from a doctor or other health care professional.***

Except as required under Chapter 3 of the *Australian Consumer Law (ACL)*, or as expressly set out in these terms, we provide no warranty, guarantee or assurance, express or implied, in relation to the Services. Except in the case of a failure by us to comply with a consumer guarantee under any of sections 51, 52 or 53 of the ACL, our liability for a failure to comply with a consumer guarantee is limited to the supply of the relevant Service again or the payment of the cost to you of having that Service supplied again. Subject to the foregoing, all guarantees, conditions and warranties which would otherwise be implied in relation to the supply of the Services (whether implied by statute, general law or otherwise) are expressly excluded to the full extent permitted by law.

## **10. Your password and identification details**

The Services are securely hosted on dedicated servers in Australia and allow access only to people with a valid password and identification details.

You are entirely responsible for maintaining the confidentiality of your Precedence Account identification details and password to ensure that no unauthorised person can access your cdmNet accounts. It is your sole responsibility to:

- control the dissemination and use of your identification details and password; and
- authorise, monitor, and control access to and use of your Precedence Account, password and identification details.

### **11. Identification of users**

We have a responsibility, under both Commonwealth and State legislation, to maintain the security of personal data and the privacy of the individual. By establishing a Precedence Account, you represent that your identification details are accurate and that you are authorised to participate in this Service. You acknowledge that the provision of incorrect identification details may result in an infringement of Commonwealth or State privacy-related legislation and may constitute a criminal offence in some circumstances. You agree to us conducting random verification checks in order to confirm your identity and contact details.

We understand how important the security of your personal information is to you. Therefore, if you lose your identification details and you are unable to sufficiently identify that you own your Account, then we may not be able to re-open your Account and you may not be able to access the information which you have stored on our site.

So long as we have implemented reasonable security measures, we will not be liable for any loss that you may incur as a result of someone else using your password or identification details to access this site either with or without your knowledge.

### **12. What we are not responsible for**

You acknowledge that, subject to your express or implied rights at law including but not limited to any applicable consumer guarantees and other rights which may arise under the *Australian Consumer Law* (to the extent that they cannot be excluded or limited) in the manner described in these Terms), we are not liable for any loss or damage (including injury or death) arising directly or indirectly from:

- any breakdown or interruption in our services due to circumstances beyond our control;
- any corruption of data and any breakdown, interruption or errors caused to a member's computer or computing equipment as a result of using our services or as a result of software being downloaded to your computer for the purposes of using any Service;

- any failure of a Service to perform in whole or in part any function which we have specified it will perform;
- any use by you of multiple identities
- access to or use of your personal information which is incorrect for any reasons not attributable to negligence on our part;
- any delays or errors by other parties;
- any actual or perceived failure of any of our services to meet any express or implied warranty, including but not limited to implied warranties of merchantability or fitness for a particular purpose, save that the foregoing does not purport to exclude any consumer guarantees implied by law which cannot lawfully be excluded. Where consumer guarantees are implied by statute and cannot be excluded, our liability is limited to the full extent prescribed or permitted by the statute in question; or
- disclosure of information as a consequence of unauthorised access by a person to personal or confidential health information (so long as we have had reasonable security measures in place).

You agree not to use the Services to upload, post, transmit, share, store or otherwise make available any content that we deem or which is determined by the regulatory authorities to be harmful, threatening, unlawful, defamatory, infringing, abusive, inflammatory, harassing, vulgar, obscene, fraudulent, invasive of privacy or publicity rights, hateful, or racially, ethnically or otherwise objectionable. We accept no liability for any loss or damage that you may suffer as a consequence of any such information being posted by a third party. You agree to indemnify us in respect of any loss or damage that we may incur as a result of your breach of these conditions.

### **13. Links to other web sites**

Although we are selective about the organisations that we link to, we do not assume any responsibility for any websites or third-party services that are linked to our site or that you browse after following a link from our site.

Those links are provided for convenience only and may not remain current or be maintained. We are not responsible for the content, security or privacy practices associated with linked websites.

Our links to other websites should not be construed as an endorsement, approval or recommendation by us of the owners or operators of those linked websites, or of any information, graphics, materials, products or services referred to or contained on those linked websites, unless we specifically advise to the contrary.

#### **14. Copyright**

All intellectual property rights in the Services or any component of the Services are owned by us. Materials owned by us may not be reproduced, adapted or translated, in whole or in part, by any persons other than us without our prior written permission.

#### **15. Sending communications**

Unless you state otherwise, you authorise us to send communications (including "commercial electronic messages" as defined under the *Spam Act 2003* (Cth)) to you via email, SMS and phone using the contact details as recorded in your Precedence Account. Our email, SMS and phone communications to you may refer to the Services we provide to you but will not disclose any personal information.

When we send an email or SMS to you, you are deemed to have received the communication at the time it is capable of being retrieved from your designated email address or mobile phone number.

#### **16. Linking to us**

If you have a publicly accessible website, we usually do not mind if you have a simple link from your website to ours. However, you must first ask our permission.

#### **17. Our privacy policy**

Our privacy policy explains the access, use and storage of the personal information placed on our website, and your rights to change or delete it. You will always be able to view this policy by clicking on the "**Privacy**" link at the bottom of any page of our website. By agreeing to the Terms, you acknowledge that you understand and accept our privacy policy.

#### **18. What happens to a patient's health record if membership ceases?**

Members will be advised, as far as practicable in advance, when their Precedence Account is closed. Advice will be provided by message to the preferred means of contact which members have registered with us.

When a patient ceases to be a member, any existing members of the patient's care team can continue to access the patient's health record for a minimum period of six months if the relevant consent or authorisation is in place. This is to ensure that the management of the patient is not compromised as a result of the patient's cessation of membership.



After this six-month period, the patient record may be archived in accordance with this Part 18, but temporary read access can still be provided to the patient or health care provider if required. We reserve the right to charge a fee for this service. We do not provide any members with a copy of the health record on tangible media but members can download information themselves.

If a patient ceases to be a member, their health record will be archived for a period of 7 years from the date that the patient ceases being a member or the patient reaches age 25, whichever is later. Subject to the foregoing, a patient may choose to re-activate a previous Precedence Account if re-subscribing during this period. Strict identification requirements apply before an old Precedence Account can be re-activated. If the patient cannot provide sufficient identification to prove their association with a cdmNet record, we will not re-activate it.

A patient can request that their health record be made unavailable to all health care providers at any time by contacting us. Strict identification requirements apply before a health record or Patient Account can be de-activated. If the patient cannot provide sufficient identification to prove their association with the health record or Patient Account, we will not de-activate it.

#### **19. Laws that govern this agreement**

These Terms are governed by the laws of Victoria, Australia and you agree to submit to the non-exclusive jurisdiction of the courts of Victoria, including federal courts located in Victoria.

#### **20. Accessing this web site outside Australia**

We make no representation that materials on our websites are appropriate or available for access and/or use in locations outside Australia. Those who choose to access these sites from other locations do so at their own initiative and are responsible for compliance with local laws. You acknowledge that other countries may have privacy laws which differ from Australia's privacy laws, and you consent to your personal information being transmitted to any such jurisdiction. We reserve the right to refrain from transmitting personal data overseas if we believe that doing so would infringe Australian privacy laws.

#### **21. General**

If you don't comply with these terms, you agree that we have the right to suspend or terminate your Account, and restrict your access to our website. If you are a patient, we may (to the extent permitted by law) remove or delete any of your health information that you or others have placed on our site. If you are a health care provider, we may (to the extent permitted by law) deny you access to the site and Services. You agree that you will not hold us responsible in any way for the loss,

corruption or change to any of the information you post to our websites. We may also take any legal action we think is appropriate to protect our rights. If you do anything in your use of our websites which causes or may cause harm to yourself or others, including us, you agree to hold us harmless against any liability arising from your actions.

We accept no liability for any failure to comply with these Terms where such failure is due to circumstances beyond our reasonable control.

If we waive any rights available to us under these Terms on one occasion, this does not mean that those rights will automatically be waived on any other occasion. If any part of these Terms is held to be invalid, unenforceable or illegal for any reason, the remaining provisions of these Terms shall nevertheless continue in full force.

## **22. Feedback**

Please help us keep the Services an enjoyable and positive experience. You can use the "**Contact Us**" link on our home page to send us comments and criticisms. If you are dissatisfied with our response or with the provision of the Services, your only remedy under these Terms (but subject to any other statutory rights which you may have) is to de-activate your Account and stop using the website.

**Updated 30 November 2016**